

NEBRASKA DEPARTMENT  
OF INSURANCE

JUL 28 2000

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL  
OF APPLICATION FOR LICENSE  
FOR CLAYTON M. BULLARD

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
RECOMMENDED ORDER  
AND ORDER

CAUSE NO.: A-1406

This matter came on for hearing on the 28<sup>th</sup> day of June, 2000, before Christine M. Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The matter arises out of a denial of an application for a resident insurance agent license. The Nebraska Department of Insurance ("Department") was represented by its legal counsel, Eric Dunning. Clayton Bullard ("Applicant") was present and offered oral and written testimony. Michael Albert testified on behalf of Applicant. The proceedings were tape recorded by Stacey Bellefeuille, a licensed Notary Public. The Rules of Evidence were not requested and the hearing was governed accordingly. Evidence was presented by Applicant and the Department, and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law and Recommended Order.

FINDINGS OF FACT

1. The Department is the duly designated agency charged with regulating the business of insurance and with exercising jurisdiction and control over the licensing of insurance agents in the State of Nebraska, pursuant to Neb. Rev. Stat. §§44-101.01 and 44-4001 et. seq.

2. On or about April 4, 2000, Applicant applied for a resident insurance agent's limited license to sell prepaid legal insurance. (Ex. 1).
3. Applicant's address of residence as listed on the application is 3442 Corby Street, Omaha, Nebraska 68111.
4. On or about April 6, 2000, Beverly Creager, Licensing Administrator for the Nebraska Department of Insurance, notified Applicant that his application for an insurance agent's license was denied based upon Neb. Rev. Stat. §44-4026(4). (Ex. 1). Neb. Rev. Stat. §44-4026 provides that the Director may deny an application for an agent's, broker's, or agency license if the Applicant has been convicted of any felony or Class I, II or III Misdemeanor evidencing that such Applicant is not worthy of the public trust.
5. On or about May 5, 2000, Applicant requested a hearing, pursuant to Neb. Rev. Stat. §44-4027, to appeal the decision denying him an insurance agent's license by the Department. (Ex. 1).
6. The Notice of Hearing was served upon the Applicant by U.S. Mail to his address of record on or about May 10, 2000. (Ex. 2).
7. In response to Part III, C, of the application form, Applicant disclosed convictions from 1990 in the United States District Court, District of Colorado, for Conspiring to Possess with Intent to Distribute Five Kilograms or More of Cocaine, Conspiracy to Structure and Assist in Structuring Transactions With One or More Financial Institutions for the Purpose of Evading the Reporting Requirement and Possession of a Firearm in Commerce and Affecting Commerce by a Convicted Felon.

Applicant was originally sentenced to a 120 month concurrent sentence, but his sentence was subsequently lowered to a 60 month concurrent sentence by agreement of the parties and approval of the court. (Ex. 8). Applicant testified that he was involved in drug trafficking in Colorado and assisted in structuring money transfers so that the transactions would not be reported by financial institutions to the Internal Revenue Service. By structuring the money transfers in amounts less than \$10,000, the reporting requirement could be avoided.

8. Applicant was incarcerated until 1994 and then was on parole for 60 months. During his parole, Applicant was gainfully employed in sales positions and was responsible for reporting to his parole officer on a monthly basis or as frequently as contacted by the parole officer. Applicant was subject to random drug testing during his period of parole and testified that on one occasion in 1995 he failed a drug test due to personal use of cocaine. Applicant agreed to 120 days house arrest and successfully completed his parole July 2, 1999.

9. Applicant testified to a prior felony which was not reported on his application form. In 1988, Applicant was convicted of cocaine possession in Colorado state court and was sentenced to probation. Applicant explained that he did not report this conviction on his application form because the probation sentence was running concurrent with the federal sentences.

10. After successfully completing his parole, Applicant relocated from Colorado to Omaha, Nebraska in October 1999 and has been gainfully employed as a

flooring installer since October 1999. Applicant testified that he is from Omaha, Nebraska and he has family and friends residing in Omaha, Nebraska.

11. Applicant provided several letters in support of his request for a license. (Exs. 9, 10, 11, 12, 13, 14, 15, 16). A number of individuals prominent in eastern Nebraska testified by letters of support that they have known Applicant for, on average, thirty years, and that he has many positive attributes including marketable skills, an extraordinary work ethic, is intelligent, dependable, focused, conscientious, and hard working. The character witnesses state that Applicant recognizes his past mistakes and is remorseful. The witnesses included Mercedes Bullard, a retired Omaha Public Schools principal; Mary Dean Pearson, President/CEO of Boys & Girls Clubs of Omaha; Brenda J. Council, former member, Omaha City Council; Charles W. Bowles, retired US West Communications; Theodora Meadows, a retired Omaha Public Schools educator, University of Nebraska recruiter and supervisor of student teachers; Kathy Trotter, Principal of Jesuit Middle School of Omaha; Ann B. Carter, Specialist, Omaha Public Schools; and Jean Claxton, Regency Travel.

12. Applicant testified that he has participated in drug rehabilitation programs and that he has not used any drugs since the parole violation in 1995.

#### CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of insurance agents and brokers to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4001 et seq.

2. The Department has personal jurisdiction over Applicant.

3. Although the past convictions for Conspiring to Possess with Intent to Distribute Five Kilograms or More of Cocaine, Conspiracy to Structure and Assist in Structuring Transactions With One or More Financial Institutions for the Purpose of Evading the Reporting Requirement and Possession of a Firearm in Commerce and Affecting Commerce by a Convicted Felon constitute a sufficient basis for denying Applicant a license, consideration must be given to the fact that no legal action has been taken against Applicant since his parole violation in 1995 and that the Applicant has demonstrated that he has been successfully rehabilitated. Applicant has been gainfully employed since his release from prison. Applicant is active in the Omaha community and participates in church activities, relapse prevention programs and Narcotics Anonymous Group meetings. Applicant's letters of support from his character witnesses are compelling. The granting of a license by the Department is based upon the truth and veracity of the facts disclosed in the application and at the hearing. The Director of the Department of Insurance should allow the Applicant to engage in the business of insurance as contemplated by 18 U.S.C. §1033(e).

#### RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended to the Director of Insurance that the Director grant Applicant's request for an insurance agent's license with such license restricted to the sale of pre-paid legal insurance. If at some point in the future Applicant wishes to seek licensing for additional lines of insurance, Applicant must come before the Director at hearing in support of his request.

Dated this 27th day of July, 2000.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

Christine M. Neugebauer  
HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department In the Matter of the Denial of Application for License for Clayton M. Bullard, Cause No. A-1406.

Dated this 27th day of July, 2000.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

L. Tim Wagner  
L. TIM WAGNER  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon Applicant by mailing a copy to Applicant at 3442 Corby Street, Omaha, Nebraska 68111 by certified mail, return receipt requested on this 28th day of July, 2000.

Stacey M. Bullard